

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL

FILE COPY



MARK L. SHURTLEFF
ATTORNEY GENERAL

RAYMOND A. HINTZE
Chief Deputy

Protecting Utah • Protecting You

KIRK TORGENSEN
Chief Deputy

ERRA-05-11

January 19, 2011

Lauriame Jackson, Enforcement Attorney
U.S. EPA Region VIII
1595 Wynkoop Street (ENF-L)
Denver, Colorado 80202-1129

Re: **Environmental Covenant for Richfield PCE Site, EPA Site ID 08QR, Tax Parcel 1-44-21**

Dear Ms. Jackson:

Enclosed please find the environmental covenant executed by the Utah Department of Environmental Quality for the above-referenced site. I would appreciate receiving a copy of the final recorded document from you. Please contact me by telephone at (801) 536-4122, or by e-mail at skallen@utah.gov, if you need anything further.

Sincerely,

Sandra K. Allen,
Assistant Attorney General

SKA/srh

Enclosure(s)

cc: Hans Millican, Division of Environmental Response and Remediation



When Recorded Return To:

Mr. Jerry K. Thomas
260 West 500 South
Richfield, Utah 84701

Mrs. Katrina M. Thomas
339 South 500 West Street
Richfield, Utah 84701

Parcel No 1-44-21
EPA Site Id. 08QR

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Mr. Jerry K. Thomas and Mrs. Katrina M. Thomas (“Owners”), the United States Environmental Protection Agency (“EPA”) and the Utah Department of Environmental Quality (“DEQ”) (collectively “Parties”), pursuant to Utah Code Ann. § 57-25-101 et seq. (“Act”) and concerns the Property described in paragraph B.2 below. EPA and DEQ each enter this Environmental Covenant in the capacity of an Agency as defined in the Act. EPA and DEQ assume no affirmative obligations through the execution of this Environmental Covenant.

A. Environmental Response Project

The Richfield PCE Site (“Site”) is a tract of real property, comprising approximately 0.3 acres and located at 345 North 700 East, Richfield, Utah, as depicted generally on the map attached hereto as Exhibit A. The plume source for the Site originated from a former dry cleaning building that began operations in the early 1960s. The plume is estimated to affect roughly 50,000 square feet subsurface area, originating in the historic Day-Nite Laundry parking lot located next to the former dry cleaning building, and extended approximately one tenth of a mile to the southeast. The Owners have owned the Site property since 2001 and converted the building on the Site into a gymnastics school for children. The Owners built some additions onto the original building and the resulting building is approximately 4,300 square feet.

The Site was identified for possible contamination as a result of a removal conducted at an adjacent gas station, which contained underground storage tanks. Detections of perchloroethylene (“PCE”) were found in soil and groundwater. EPA and the DEQ initiated a preliminary assessment at the Site in 2008. EPA’s Removal Program conducted indoor air sampling in the building in July and August 2008. Concentrations of PCE in indoor air were high, prompting EPA and the DEQ to have health concerns for the gymnastics students, coaches,

and Owners of the building. At EPA's request, the Owners hired a contractor to install a vapor mitigation system in the building, similar to those used in residences. The contractor installed three sub-slab depressurization systems in different locations of the building in September 2008, and the Owners used caulk to seal cracks and joints in the flooring. EPA collected two twenty-four hour air samples at different parts of the building on October 6-7, 2008, which demonstrated a reduction of PCE concentrations compared to previous sampling, but PCE concentrations continued to be above EPA's acceptable cancer risk levels. In response, the Owners sealed additional cracks in the flooring and EPA re-sampled the indoor air with results indicating that the air quality was within EPA's acceptable risk range for PCE.

The primary contaminant of concern at the Site is PCE. The identified pathway of exposure is through inhalation of volatile organic compounds in indoor air within the building located on the Site.

B. Covenant

Now therefore, the Parties agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to the Act.
2. Property. This Environmental Covenant concerns a parcel of real property located in the city of Richfield, Sevier County, Utah at 345 North 700 East, tax parcel number 1-44-21, comprising approximately 0.3 acres, as more particularly described in Exhibit B attached hereto and hereby incorporated by reference herein ("Property").
3. Owners. Jerry K. Thomas and Katrina M. Thomas, who reside at 260 West 500 South, Richfield, UT 84701 and 339 South 500 West Street, Richfield, Utah 84701, respectively, are the owners of the Property in fee simple. Consistent with Paragraph 6 of this Environmental Covenant, the obligations of the Owners are imposed on assigns, successors in interest, including without limitation future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and the like ("Transferees").
4. Holders. Owners, whose addresses are listed above, are the Holders of this Environmental Covenant.
5. Activity and Use Limitations. As part of the *Environmental Response Project* described above, the Owners hereby impose and agree to implement, administer, and maintain the following activity and use limitations. In the event the Owners convey or transfer an interest in the Property or any portion thereof to another party, the Owners shall take necessary measures to ensure that the Transferee will implement, administer, and maintain the following activity and

use limitations.

In order to limit exposure of PCE in the building currently located on the Property, a gymnasium that is approximately 4,300 square feet in size, the Owners shall submit a letter to the DEQ and EPA that the three sub-slab depressurization systems, installed in September 2008 or thereafter, are still running and drawing a vacuum. The first letter to the DEQ and EPA must be received within one (1) year of the effective date of this Environmental Covenant in Paragraph 13.

- a. Upon request from the DEQ and/or EPA, as long as the building is occupied, Owners shall conduct sampling, in accordance with a plan approved by DEQ and/or EPA, to demonstrate that the three sub-slab depressurization systems, installed in September 2008 or thereafter, are operating effectively; Owners shall provide the results of this sampling and related information to the DEQ and/or EPA within sixty (60) days of each request.
- b. If the three sub-slab depressurization systems, installed in September 2008, are not operating effectively the Owners shall repair or replace them.
- c. In order to limit exposure of PCE's in the building currently located on the Property, Owners shall seal and/or reseal any cracks and joints in the flooring of the building as long as the building is occupied.
- d. If constructing a new building on the Property that will have a foundation, Owners shall install a vapor mitigation system (designed or certified by a professional engineer licensed by the State of Utah). Owners shall not allow occupancy if a vapor mitigation system has not been installed.
- e. Vapor mitigation systems installed after September 2008 are subject to the requirements of subparagraphs a, b, c and d above.
- f. Owners agree to refrain from using the Property and any other property at the Site, to the extent such other property is controlled by Owners, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions performed or to be performed at the Site, including the continued operation of the three sub-slab depressurization systems.
- h. Owners shall reimburse the DEQ in full for all activities contemplated in

this Environmental Covenant which require review, inspection, involvement, or otherwise incur costs for the DEQ in accordance with the fee schedule approved by the Utah legislature.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owners and any Transferee during that person's period of control, occupation, or ownership interest, and shall run with the land, pursuant to the Act and subject to amendment or termination as set forth herein.

7. Compliance Enforcement. This Environmental Covenant may be enforced pursuant to the Act. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party, and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the DEQ or EPA from exercising any authority under applicable law.

8. Rights of Access. Owners hereby grant to the DEQ and EPA, their agents, contractors, and employees the right of access to the Property for inspection, implementation, or enforcement of this Environmental Covenant.

9. Compliance Reporting. Upon request, Owners or any Transferee or Holder shall submit written documentation to the DEQ and EPA verifying that the building activity and land use limitations remain in place and are being followed.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 20__ , RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 20____, IN [DOCUMENT _____, or BOOK____, PAGE _____].

Owners shall notify the DEQ and EPA within ten (10) days after each conveyance of an interest in any portion of the Property. Owners' notice shall include the name, address, and telephone number of the Transferee, a copy of the deed, or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owners hereby represent and warrant to the other signatories hereto:

- A. that the Owners are the sole owners of the Property;
- B. that the Owners hold fee simple title to the Property;
- C. that the Owners have the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- D. that the Owners have identified all other persons that own an interest in or hold an encumbrance on the Property, including lessees and mortgage lien holder State Bank of Southern Utah, and notified such persons of the Owners' intention to enter into this Environmental Covenant; and
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which Owners are a party or by which Owners may be bound or affected;

12. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Act. The following parties waive the right to consent to amendment or termination and also consent to recording of any instrument related to the amended or terminated Environmental Covenant: Jerry K. Thomas and Katrina M. Thomas, if they no longer hold an interest in the Property.

13. Effective Date, Severability and Governing Law. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Sevier County Recorder. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

14. Recordation and Distribution of Environmental Covenant. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owners shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Sevier County Recorder's Office. The Owners shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the DEQ; EPA; the County of Sevier; any "Holder," and any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by the DEQ.

15. Notice. Unless otherwise notified in writing by or on behalf of the current owner or the DEQ, any document or communication required by this Environmental Covenant shall be

submitted to:

DEQ

Project Manager, Richfield PCE Site (Richfield 300 North 700 East PCE Plume Site)
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
P.O. Box 144840
Salt Lake City, Utah 84114-4840

EPA

On Scene Coordinator, Richfield PCE Site, 8EPR-ER
U.S. EPA
1595 Wynkoop Street
Denver, Colorado 80202

Regional Institutional Controls Coordinator, EPR-SR
U.S. EPA
1595 Wynkoop Street
Denver, Colorado 80202

Owners

Mr. Jerry K. Thomas
260 West 500 South
Richfield, Utah 84701

Mrs. Katrina M. Thomas
339 South 500 W Street
Richfield, Utah 84701

16. Governmental Immunity. In executing this covenant, the DEQ does not waive governmental immunity afforded by law. The Owners, for themselves and their successors, assigns, and Transferees, hereby fully and irrevocably release and covenants not to sue the State of Utah, its agencies, successors, departments, agents, and employees ("State") from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to sections 57-25-109 and 57-25-110 of the Utah Code Ann. or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101 et seq. or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Sections 63G-7-202 and -902 of the Governmental Immunity Act, as determined in a court of

law.

The undersigned representative of the Owners certifies that s(he) is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Mr. Jerry K. Thomas

By: Jerry K Thomas
Name: Mr. Jerry K. Thomas
Title: Owner

Date: 12-16-10

State of Utah)
County of Sevier) ss:

Before me, a notary public, in and for said county and state, personally appeared Jerry K Thomas, a duly authorized representative of Sevier Valley Gym, who acknowledged to me that s[he] did execute the foregoing instrument on behalf of Sevier Valley Gym.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 16th day of December, 2010.

Lori Taylor
Notary Public



IT IS SO AGREED:

Mrs. Katrina M. Thomas

By: KATRINA M. THOMAS
Name: Mrs. Katrina M. Thomas
Title: Owner

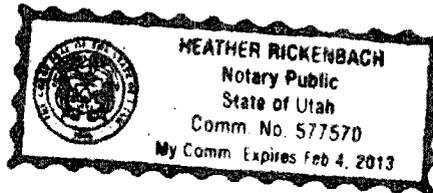
Date: 10/25/10

State of Utah)
County of SEVIER) ss:

Before me, a notary public, in and for said county and state, personally appeared KATRINA M. THOMAS a duly authorized representative of SEVIER VALLEY GYMNASIUMS who acknowledged to me that s[he] did execute the foregoing instrument on behalf of SEVIER VALLEY GYMNASIUMS

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 25th day of OCTOBER, 2010

Heather Rickenbach
Notary Public



IT IS SO AGREED:

United States Environmental Protection Agency

By: _____

Date: _____

Name: David Ostrander, Director

Title: Preparedness, Assessment, and Response Program

State of Colorado)

)

ss:

County of _____)

Before me, a notary public, in and for said county and state, personally appeared _____, a duly authorized representative of _____, who acknowledged to me that s[he] did execute the foregoing instrument on behalf of _____.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this ____ day of _____, 20__.

Notary Public

IT IS SO AGREED:

Utah Department of Environmental Quality

The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

By: Brent H. Everett

Date: 12 January 2011

Name: Brent H. Everett

Title: Director, Division of Environmental Response and Remediation
Utah Department of Environmental Quality

State of Utah)

) ss:

County of Salt Lake)

Before me, a notary public, in and for said county and state, personally appeared Brent H. Everett an authorized representative of the Utah Department of Environmental Quality, who acknowledged to me that s[he] did execute the foregoing instrument this 12 day of January, 2011.

Dana J. Powers
Notary Public

My Commission expires: 7-3-2011

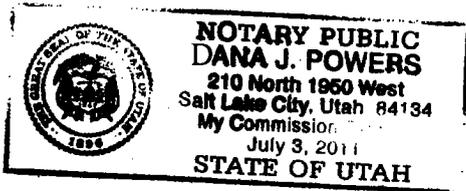
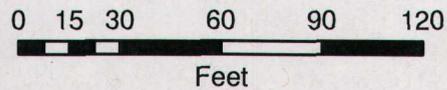


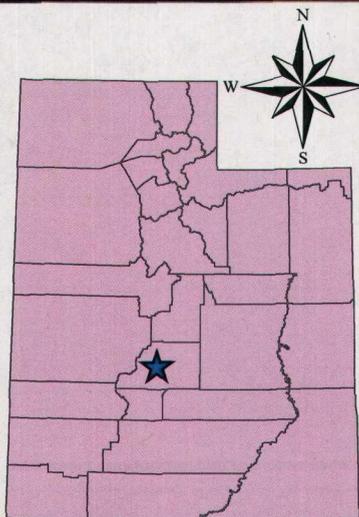
EXHIBIT A



	RP-01	RP-02	RP-03	RP-04	RP-05	RP-06	RP-07	RP-08	RP-09	RP-10
PCE (ug/L)	90	150	8,300	4,200	5,100	2,400	43	14,000	1,300	3,200



- ★ Site Location
- Sample Location (2008)



Utah Department of
Environmental Quality
Division of Environmental
Response and Remediation

EXHIBIT A

Richfield 300 N 700 E PCE Plume
Sevier County, Utah

by: HJM

date: 01/05/2011

EXHIBIT B

When recorded return to:
JERRY K. THOMAS, JR.
440 SOUTH 300 WEST
RICHFIELD, UT 84701
FILE NO.: 2320-R
TAX ID.: Private

**"CORRECTION"
WARRANTY DEED**

MICHAEL J. SLATER,

Grantor

of MONROE, County of SEVIER, State of Utah,

hereby CONVEY and WARRANT to

JERRY K. THOMAS, JR. AND KATRINA M. THOMAS,
Husband And Wife, As Joint Tenants, With Full Rights OF Survivorship,

Grantee

of RICHFIELD, County of SEVIER, State of Utah,
for the sum of Ten Dollars and Other Good and Valuable Consideration
the following described tract of land in SEVIER County, State of Utah, to-wit:

Commencing at the Northeast corner of Lot 1, Block 3, Plat "D", Richfield City Survey,
and running thence South 80 feet; thence West 90 feet; thence North 25.5 feet; thence
West 124.5 feet; thence North 54.5 feet; thence East 60 feet; thence North 50 feet; thence
East 154.5 feet; thence South 50 feet to the place of beginning.

Subject to easements restrictions and rights of way appearing of record or enforceable in law
and equity and 1999 taxes and thereafter.

"THIS CORRECTION WARRANTY DEED IS TO CORRECT THE LEGAL
DESCRIPTION ON THAT CERTAIN WARRANTY DEED RECORDED AUGUST 15,
2000, AS ENTRY NO. 297287, IN BOOK 397, AT PAGE 039."

WITNESS the hand of said grantor, this 10th day of Jan., A.D. 2000


MICHAEL J. SLATER

00299970 Bk00404 Pg00221-00221

STATE OF UTAH

JAYRENE E NIELSEN RECORDER SEVIER COUNTY
2001 JAN 19 12:11 PM FEE \$11.00 BY JBM
REQUEST: UNITED TITLE SERVICES

COUNTY OF SEVIER

On this 10th day of January 2000 personally appeared before me
MICHAEL J. SLATER, the signer of the within instrument who duly acknowledged to me that
they executed the same.

My Commission Expires: 5/2/04

Notary Public

Residing at